BAIL SLIP

The Appellants (Accused 1 to 6, 8 to 14 & 17 to 21 & 24 in S.C.No.192 of 1995 on the file of the Court of the Addl District Sessions Judge, Nagapattinam) were directed to be released on bail as per order of this Hon"ble Court dated 28.8.2001 and made in CRL.M.P.2137, 2163 and 5446 of 2001 respectively in Crl.A.No.703 of 1996.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE A.KULASEKARAN

CRL. APPEAL NO. 703 OF 1996

1. Chandramohan
2. Sivanandham
3. Chandrakumar
4. Mahalingam
5. Chinnaiyan
6. Kathaiyan
7. Selvamani @ Chellappa
8. Kunju @ Kunju Pillai
9. Thangaraj
10. Ramesh
11. Pounraj
12. Selvam
13. Annadurai
14. Jeeva
15. Manoharan
16. Gajendran
17. Veeramani
18. Karuppaian
19. Ganesan .. Appellants/ Accused 1 to 6, 8 to 14 & 17 to 21 & 24)

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- Vs -

State rep. by
Inspector of Police
Kudaivasal Police Station. .. Respondent / Respondent

Appeal preferred against the conviction and sentence passed by the learned Addl. Sessions Judge, Nagapattinam, made in S.C. No. 192 of 1995 dated 20.08.1996 as stated therein.

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For Appellants : Mr. S.Ashok Kumar, SC, for
Mr. D.Veerasekaran

For Respondent : Mr. K.Duraisami, PP assisted by
Mr. S.Jayakumar, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY N.DHINAKAR, J.)

The appellants are A-1 to A-6, A-8 to A-14, A-17 to A-21 and A-24. They were tried before the learned Addl. Sessions Judge, Nagapattinam, along with seven others, who were arrayed as A-7, A-15, A-16, A-22, A-23, A-25 and A-26. The learned trial Judge, on the evidence adduced, while acquitting A-7, A-15, A-16, A-22, A-23, A-25 and A-26, found the above appellants in this appeal alone guilty under various charges, which were framed against them. In this appeal, for the sake of convenience, the acquitted accused, whom we have referred to above and the appellants in this appeal will be referred as A-1 to A-26 in the same order as they were arrayed before the learned Addl. Sessions Judge.

2. The allegation against A-1 to A-26 is that at 1.15 p.m. on 10.9.94, they formed themselves into an unlawful assembly and that A-1 to A-23 were armed with dangerous weapons and in furtherance of the common object of the said unlawful assembly, they caused the death of the first deceased Rajamanickam (for short D-1), the second deceased Venkatachalam (for short D-2) and the third deceased Balasubramanian (for short D-3) and during the course of the same transaction they also caused injuries to P.W.s 2 and 3.

3. The first charge was framed against A-24 to A-26 under Section 147 IPC. The trial Judge found A-24 alone guilty under the said charge and sentenced him to one year rigourous imprisonment, while he acquitted A-25 and A-26.

4. The 2nd charge was framed under Section 148 IPC against A-1 to A-23. While the trial Judge found A-1 to A-6, A-8 to A-14, A-17 to A-21 guilty and sentenced each one of them to two years rigourous imprisonment, acquitted A-7, A-15, A-16, A-22 and A-23 under the said charge.

5. The 3rd charge was framed against A-1 to A-26 under Section 341 IPC for wrongfully restraining D-2, but the trial Judge convicted A-1 to A-6, A-8 to A-14, A-17 to A-21 and A-24 alone and sentenced each one of them to one month simple imprisonment, while he acquitted the other accused under the said charge.

6. The 4th charge framed against A-1 to A-26 under Section 356 IPC ended in conviction of the appellants alone and the allegation in the said charge is that they assaulted D-1 to D-3. On being convicted, each of the appellant was sentenced to rigourous imprisonment for three months.

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7. The 5th charge was framed under Section 324 IPC against A-1 to A-12, A-14 to A-19 and A-21 to A-26. The allegation in the said charge is that they caused injuries to D-1 to D-3 and P.W.s 2 and 3. The learned trial Judge, while finding A-2, A-4, A-14, A-17 to A-19 and A-21 guilty under Section 324 IPC, whereas found A-1, A-3, A-5, A-12, A-13 and A-24 guilty under Section 324 read with 149 IPC and on being found guilty, each one of them was sentenced to two years rigourous imprisonment. A-6 and A-8 to A-11, though were found also guilty under Section 324 read with 149 IPC, the learned trial Judge, adopting a different and illogical standard, did not award any sentence. He also did not realise that those accused who were convicted under this charge with the aid of Section 149 IPC were not at all charged under the section as Section 149 IPC is an independent offence.

8. A-13 and A-20 were charged under Section 324 read with 149 IPC under charge No.6 and the learned trial Judge, while convicting A-13 under Section 324 read with 149 IPC, found A-20 guilty under Section 324 IPC simplicitor and each of the accused was sentenced to two years rigourous imprisonment under the said charge.

9. The 7th charge framed under Section 326 IPC against A-7, A-13, A-15, A-16, A-20, A-22 and A-23 was on the allegation that A-13 cut P.W.3 with an aruval on the left hand fingers and A-7, A-15, A-16, A-22 and A-23 attacked D-1 and A-2 attacked D-3 with dangerous weapons respectively. The learned trial Judge, while convicting A-13 under Section 326 IPC simplicitor as charged, found A-20 guilty under Section 326 read with 149 IPC, though there was no specific charge under Section 149 IPC against the accused and each one of them was sentenced to three years rigourous imprisonment and each one of them was directed to pay a fine of Rs.500/= with a default sentence of six months rigourous imprisonment, while all the other accused were acquitted.

10. Charge No.8 under Section 326 read with 149 IPC was framed against A-1, A-3 to A-6, A-8, A-9 to A-12, A-14, a-17 to A-19, A-21, A-24 and A-26 and the allegation in the said charge is that they were members of the unlawful assembly when the other accused caused injuries to D-1 to D-3 and the witnesses. The trial Judge found A-12, A-17, A-18, A-21 alone guilty under the said charge and sentenced each one of them to three years rigourous imprisonment and each one of them was directed to pay a fine of Rs.500/= with a default sentence of six months rigourous imprisonment, while A-1, A-3 to A-6, A-8 to A-12, A-14 and A-19 were acquitted under the said charge.

11. Charge No.9, which was framed under Section 326 read with 149 IPC (2 counts) was framed against A-2, who was found not guilty under the said charge.

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12. Charge No.10 was framed under Section 326 read with 149 IPC (3 counts) against A-25, but he was found not guilty under

the said charge.

13. The 11th charge was framed against A-3 and A-12 under Section 302 IPC simplicitor for causing the death of D-2 and D-3. The learned trial Judge found A-3 and A-12 guilty and sentenced each one of them to imprisonment for life under the said charge, but also strangely found A-1 guilty under the said charge and sentenced him to imprisonment for life for causing the death of D-1, though no charge was framed against him for the murder of D-1 under the said charge.

14. The 12th charge under Section 302 read with 34 IPC was framed against A-1 to A-3, A-5, A-6, A-8 to A-12, A-13, A-21 and A-24 to A-26. The allegation against the accused in the said charge is that A-1 to A-3, A-5, A-6, A-8 to A-12 and A-21 attacked D-3 and caused his death and that A-24 attacked D-1 while A-13, A-25 and A-26 attacked D-2. Charge No.13 was also framed under Section 302 read with 34 IPC (2 counts) against A-4, A-14, A-17 and A-18. The learned trial Judge, without giving a separate finding under charge Nos. 12 and 13, gave a common finding that A-1 to A-6, A-8 to A-11, A-13, A-14, A-17, A-18 and A-21 are guilty of the said offences and sentenced each one of them to imprisonment for life without specifically stating whether the said conviction is under charge No.12 or charge No.13, forgetting the contents of the charge under charge No.12, which was framed against the accused mentioned in the said charge, that they have attacked D-1 to D-3, whereas under charge No.13, the allegation is that the accused mentioned in the said charge have attacked and murdered D-2 and D-3.

15. Charge No.14 framed under Section 302 read with 149 IPC was against A-2, A-4 to A-18, A-22, A-23 and A-25. The learned trial Judge did not give any finding and law is well settled that if there is no finding, it means implied acquittal.

16. Similarly, A-21, though was charged under Section 302 read with 149 IPC (2 counts) under charge No.15 for sharing the common object of the other accused for causing the death of D-1 and D-3, no finding was given by the learned trial Judge against him under the said charge and, thereby, acquitting him by implication.

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17. Charge No.16 framed under Section 302 read with 149 IPC (3 counts) was framed against A-19, A-20, A-24 and A-26 on the allegation that they shared the common object in murdering D-1 to D-3, but the learned trial Judge found A-19 and A-20 alone guilty under Section 302 read with 34 IPC for which each one of them was sentenced to imprisonment for life.

18. Charge No.17 was framed under Section 114 IPC against A-24 to A-26 for abetting the other accused without mentioning the nature of the offence, which they have abetted, and the learned trial Judge strangely convicted A-24 alone guilty under Section 302 read with 114 IPC as if the said charge is for the

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abetment of murder against A-24 even though there is no such allegation against A-24 under the said charge. On being found guilty, A-24 was sentenced to imprisonment for life. However, A-25 and A-26 were acquitted under the said charge.

19. Charge No.18 which was framed under Section 25 (1-B) (b) read with Section 4 of the Arms Act was framed against A-2, A-14 and A-21 on the allegation that they used the weapon velkambu. On being found guilty as charged, each one of them was sentenced to two years rigourous imprisonment and each one of them was directed to pay a fine of Rs.500/= and in default to undergo rigourous imprisonment for six months.

20. By the present appeal, the appellants, who were found guilty by the learned trial Judge and convicted for various offences as noted above, challenge their conviction and sentence.

21. The facts, which led to the framing of charges and ultimate conviction of the appellants and the acquittal of some of the accused are based on the following facts, which were unfolded by the prosecution before the trial court :-

The appellants and the prosecution party were residents of Neikuppai village falling within Kudaivasal Taluk. They were agriculturists by profession. The appellants are Dalits and the prosecution witnesses are caste Hindus. A person by name Murugaiyan, belonging to the Dalit community, was murdered in the year 1993-94 on account of his illicit relationship with Lakshmi, who was the wife of Swaminathan, a dobhi by profession. During Pongal, in the year 1994, the caste Hindus used to prevent their cattles from getting into the fields of the Dalits on account of which quarrels used to arise. On account of this there was animosity between the two groups. The Dalits never used to be called for work by the caste Hindus in the village. In connection with the murder of Murugaiyan, which we have mentioned earlier, a criminal case was filed against 27 accused, who were caste Hindus, and the same was pending trial on the unfortunate date of incident.

22. About a fortnight before the date of incident, A-24 to A-26 were seen talking with each other near a sluice and this was witnessed by P.W.1, who heard them telling each other that caste Hindus must be murdered. P.W.1, after attending to his work, returned to the village and informed the villagers; but the villagers did not give importance to the conversation of A-24 to A-26, which was heard by P.W.1 and which in turn was conveyed to them. P.W.1 also came to know that the accused party was convening a secret meeting. On 10.9.94 P.W.s 1, 10 and Karthikeyan were proceeding towards their house. They, in front of the house of A-24, saw all the accused standing with weapons. P.W.1 crossed the house of A-24 and, thereafter, hid himself and was watching at the accused as to what they proposed to do. A-1 and A-3 were each armed with veech aruval; A-5 to A-13, A-15 and A-16 were having aruvals; A-2 and A-14 were having velsticks; A-4 was having a sulukki and A-19 to A-23 were having iron rods. A-24 to A-26 did not have any weapons in their

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hands. While P.W.1 was watching them, the accused divided themselves into two groups; one group proceeded towards Koradacheri and the other group proceeded towards Poongavur. A-12, A-13, A-17 to A-20 and A-24 to A-26 proceeding towards Koradacheri were heard talking among themselves that they have to finish of Venkatachalam (D-2). The other accused, who went towards Poongavur were seen shouting that they have to murder atleast ten persons on that day. P.W.1 asked Karthikeyan to inform the villagers and P.W.s 1 and 10 proceeded through another road to inform others. When they were crossing a channel, they saw the accused group, which earlier proceeded towards Poongavur. A-1 was seen cutting D-1 with an aruval on his neck by saying that the persons who have murdered Murugaiyan must be done to death. D-1 fell down in the field. A-2, A-4 and A-14 stabbed him with velsticks on various parts of his body. When P.W.2 intervened, he was cut by A-3 on the head followed by A-14, who stabbed him with a velstick. This was at 1.30 p.m.

23. The accused, who went towards Koradacheri, namely, A-12 and A-24 to A-26 returned to the place and were seen telling the other accused that they have already murdered D-2. Then all the accused left the place saying that they have to murder D-3. P.W.1, out of fear, ran away from the place. The accused group went and surrounded Balasubramanian (D-3), while he was at his field, supervising agriculture work. He was surrounded by the accused and A-24 instigated the other accused not to leave him. A-1 with a veech aruval cut him on the left cheek and D-3 fell down. When P.W.8 tried to intervene, A-21 threatened him to run away from the place. A-14 beat him with a velstick on his left hand. P.W.8 ran and hid himself in the field of Swamikannu. He saw A-3 cutting D-3 on the right neck two or three times followed by A-5, A-6, A8, A-9, A-11, A-12 and A-15, who cut D-3 indiscriminately. The attack on D-3 was witnessed by P.W.9 apart from P.W.8. After the accused left the place, the witnesses went near D-3 and found him dead. Thereafter, the witnesses ran to the village where they were informed that two other persons were also murdered and that P.W.s 8 and 9 informed the other villagers that D-3 was cut to death. All the villagers went to the place where the dead bodies were lying.

24. P.W.1 left the scene of occurrence for Kudaivasal police station. P.W.1 reached Kudaivasal police station and gave an oral complaint to P.W.13, the head constable at 3.45 p.m. P.W.13 reduced the complaint into writing and the said complaint is Ex.P-1. On the complaint, Ex.P-1, P.W.13 registered a case in crime No.462 of 1994 against 26 accused under Sections 147, 148 and 302 IPC. Ex.P-11 is a copy of the printed first information report. He despatched the express reports to higher officials and handed over Ex.P-1 as well as he copy of the printed first information report, Ex.P-11 to P.W.18, a police constable with a direction that those two documents must be handed over to the learned Magistrate. He also sent information over wireless to the Inspector of Police.

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25. P.W.19, who was the Circle Inspector, Nanilam, and who was holding additional charge of Kudaivasal police station, on receipt of information over wireless, informed the police officials of Kudaivasal police station to go over to the scene of occurrence with a copy of the printed first information report. He proceeded to Neikuppai village and reached it at 4.55 p.m. A copy of the printed first information report was given by a police constable and investigation was taken up by him. At 5.05 p.m., he prepared an observation mahazar, Ex.P-8 as regards the place where the dead body of Venkatachalam (D-2) was lying. A rough sketch, Ex.P-16 was also drawn. The inquest over the dead body of D-2 commenced at 6.00 p.m. and was over by 8.00 p.m. At the time of inquest, P.W.s 1, 8 and 9 were examined and their statements were recorded. Ex.P-17 is the inquest report. After the inquest, the dead body was handed over to a police constable with a requisition to the doctor for conducting autopsy.

26. P.W.19 proceeded to the place where the dead body of Rajamanickam (D-1) was lying. He prepared an observation mahazar, Ex.P-9 at 8.30 p.m. A rough sketch Ex.P-18 was drawn. The inquest over the dead body of D-1 commenced at 9.15 p.m. and ended at 11.15 p.m. The inquest report stands marked as Ex.P-19. During inquest, the witnesses, who were earlier examined were again examined and their statements were recorded. After the inquest, he handed over the dead body of D-1 to a police constable with a requisition to the doctor for conducting autopsy.

27. At 11.45 p.m., he proceeded to the place where the dead body of Balasubramanian (D-3) was lying. He prepared an observation mahazar, Ex.P-10 and drew a rough sketch, Ex.P-20. Inquest was conducted over the dead body of D-3 between 0030 hours on the night of 10/11.9.94 and 0230 hours in the presence of panchayatadars. Ex.P-21 is the inquest report. As the witnesses who were examined at the time of inquest had no new material to offer, their statements were not recorded. After the inquest, he handed over the dead body of D-3 to a police constable with a requisition to the doctor for conducting autopsy.

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28. On receipt of the requisition, P.W.5, the Civil Surgeon attached to the Government Headquarters Hospital, Kudaivasal, conducted autopsy on the body of Rajamanickam (D-1) and found on the body the following injuries :-

> "1) An incised wound 2 cms x 1 cm x 1 cm over the right cheek. Muscles cut corresponding to the injury.
> 2) A punctured wound 2 cm x 1 cm x 1 ½ cm over the left side neck 1 cm from the middle line at the level of the cricoid cartilage. Muscles of the neck cut.
> 3) A punctured wound 2 cms x 1 cm x 1 ½ cms over the left side neck 2 cms below the injury number (2). Muscles cut.

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4) A punctured wound 2 cms x 1 cm x 2 cms over the left side neck 5 cms from the midline. Muscles cut.
5) An incised wound 15 cms x 8 cms x 6 cms over the back of the right side neck and right shoulder blade. Muscles of the neck on the back rt.side cut. 7th cervical vertebra cut and the spinal column cut at the 7th cervical vertebra.
6) An abrasion 1 cm x ½ cm over the left ear lobe.
7) An incised would 5 cms x 2 cms x 2 cms over the occipital region of the scalp and the left side muscles cut.
8) A punctured wound 2 cm x 1 cm x 1 ½ cm over the left side chest at the 7th left space in the anterior axillary line. Muscles cut.
9) A lacerated injury 5 cms x 3 cms x 2 cm over the left knee.
10) A punctured wound 2 cms x 1 cm x 1 cm over the back at the level of the right lower end of scapula. Muscles cut.
11) A punctured wound 2 cm x 1 cm x 1 cm over the back 1 cm below the injury number (10). Muscles cut.
12) A punctured wound 2 cm x 1 cm x 1 ½ cm over the right iliac crest muscles cut."

The doctor issued Ex.P-5, post-mortem certificate, with his opinion that death was on account of shock and haemorrhage due to the injury to spinal cord and that death would have occurred about 18 to 24 hours prior to autopsy.

29. The same doctor, P.W.5, on receipt of requisition from the investigating officer, conducted autopsy on the body of Venkatachalam (D-2) and found on his body the following injuries :-

"1) An incised wound lying horizontally 25 cms x 10 cms x 10 cms extending from the right side of the neck, front of the neck, below the cricoid cartilage, to the left side neck. The wound posteriorly extends from the right, to the back of the neck, to the left side of the neck.
The two ends of the wound is separated by 5 cms. The carotids arteries on both sides, jugular veins on both sides, trachea, oesophagus are cut. Muscles of the neck are completely cut and lacerated. Spinal cord and vertebral column is cut at the level of the 5th cervical, vertebra and vagus nerves and other nerves are cut.
2) An incised wound 5 cms x 2 cms muscle deep over the chin regular margins. One end of the injury joins with injury no.1 on the right side.
3) An incised wound lying horizontally over the lower end of the back of the right arm 5 cms x 3 cms bone deep. Muscles cut.
4) An incised wound 2 cms x 1 cm x 1 cm over the right hypochondrium in the mid clavicular line.
5) An abrasion 1 cm x ½ cm over the abdomen 1 cm

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over the umbilicus.

6) An incised wound 2 cms x 1 cm x 1 cm over the 3rd left intercostal space in the mid clavicular line just above the left nipple.

7) An incised wound 5 cms x 3 cms x 2 cms over the back of the left elbow, muscles cut.

8) An incised wound 2 cms x 1 cm x 1 cm over the back of the chest just below the lower end of the left scapula.

9) An incised wound 3 cms x 2 cms x 1 cm over the right side chest over the 9th right intercostal space in the anterior axillary line."

The doctor issued Ex.P-4, post-mortem certificate with his opinion that death was on account of shock and haemorrhage due to injury to carotid vessels, jugular veins, vagus veins, vagus nerve and spinal cord and death would have occurred about 18 to 24 hours prior to autopsy.

30. On receipt of the requisition, P.W.6, the Assistant Surgeon attached to the Government Headquarters Hospital, Nagapattinam at Kudaivasal, conducted autopsy on the body of Balasubramanian (D-3) and on the body the doctor found the following injuries :-

"1) Incised wound left side of the neck and left half of front of neck 14 cm x 4 cm x vertebra deep. Trache and oesophagus are completely cut below the cricoid cartilage - common carotid artery - veins are completely cut. All the muscles and nerves are cut.

2) Incised wound left side of the neck 1 cm above the wound no.1 - 10 cm x 3 cm x vertebra deep. Muscles, vessels and nerves are completely cut.

3) Incised wound right side of the neck just above the right clavicle to the midline on the back 14 cm x 3 cm vertebra deep. Common carotid artery - veins - muscle and nerves are completely cut.

4) Incised wound top of the left shoulder 14 cm x 6 cm oblique acromin present and head of humerous are exposed. Muscles are clean cut.

5) Incised wound lower pinna of the left ear 3 cm x ½ cm x ¼ cm red left ear lobe is absent.

6) Incised wound left side of the neck below the mastoid process 10 cm x 4 cm x vertebra deep. Muscles, vessels, and nerves are cut.

7) Incised wound below the left ear on the left cheek 5 cm x 2 cm x bone deep. Muscles cut.

8) Incised wound right side of the neck and front at the level of the cricoid cartilage 10 cm x 3 cm x bone deep - muscles - vessels and nerves are cut.

9) A punctured wound front of the right upper arm just above the elbow 2 cm x 1 cm x 3 cm upwards and backwards muscle are cut.

10) A punctured wound back of the middle of the right upper arm 2 cm x 1 cm x 2 cm cut muscle protruding.

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11) Incised wound back of the left elbow 10 cm x 6 cm x bone deep olecranon process of the left ulna present lower end of left humerus are completely cut.
12) Red abrasion back of the middle third of the left forearm 10 cm x 4 cm.
13) Incised wound left lateral chest wall 15 cm below the axilla 13 cm x 4 cms – rib deep. Muscles are cut.
14) Punctured wound just above the xiphoid process in the midline of the anterior chest wall 1 cm x ½ cm x 1 ½ cm muscles are cut upwards and to the right.
15) Punctured wound anterior abdominal wall 10 cm below the xiphoid process 2 cm x 1 cm x enters into the abdominal cavity and stomach.
16) Punctured wound just to the right of the umbilicus 2 cm x 1 cm omentum is protruding through the wound.
17) Punctured wound right hypochondrium 2 cm x 1 cm x 1 ½ cm muscles are cut. Upwards and to the right.
18) Incised wound right thigh inner aspect 10 cm above the right knee 6 cm x 3 cm – muscles are cut.
19) Incised wound back of the right knee 6 cm x 2 cm x bone deep muscles and vessels are cut.
20) Incised wound anterior aspect of the right leg 6 cm above the ankle joint 6 cm x 3 cm x rt. Tibia is cut to a depth of 1 cm.
21) Incised wound outer aspect of the left thigh 20 cm above the left knee 15 cm x 5 cm bone deep-muscles are cut.
22) Incised wound outer aspect of the left knee 6 cm x 3 cm bone deep.
23) Incised wound back end outer aspect of the left leg at its middle third 15 cm x 6 cm x left fibula is cut with muscles.
24) Punctured wound on the back just below and to the right of the spine of the 7th cervical vertebra 2 cm x 1-1/2 cm x 2-1/2 cm muscles are cut.
25) A punctured wound left paravertebral region of back at the level of the lower angle left scapula 2 cm x 1 cm muscles are cut. Blood with air bubbles are oozing out. This wound has punctured left lung lower lobe for 3 cms.
26) A punctured wound 20 cm below the wound No.25 on the left back 2 cm x 1 cm x 2-1/2 cm muscles are cut.
27) A punctured wound right side of the back 2-1/2 cm below the lower angle of the right scapula 2 cm x 1 cm x muscles are cut – Blood, air bubbles are oozing out. This wound punctured the right lung lower lobe for a depth of 3 cms.
28) Red abrasion just above the left iliac crust over the back 6 cm x ½ cm.

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29) Incised wound lateral aspect of the left gluteal region 5 cm x 3 cm x bone deep muscles are cut.

30) Incised wound right posterior gluteal region 2 cm x 1 cm x 1 cm."

The doctor issued Ex.P-6, post-mortem certificate, with his opinion that death was on account of shock and haemorrhage due to multiple injuries to carotid vessels, lungs, stomach, vagus and phrenix nerves and death would have occurred about 20 to 24 hours prior to autopsy.

31. In the meantime, P.W.s 2 and 3, who were also present along with P.W.1 when he gave the complaint, Ex.P-1, were referred to the hospital by P.W.13, the head constable as they had injuries on their person. They appeared before P.W.5 at 4.00 p.m. on 10.9.94 and P.W.5 examined P.W.2 and found the following injuries on his person :-

"1) A lacerated injury 2 cms x 1 cm x 1 cm over the centre of the forehead.

2) An abrasion ½ x ½ cm over the left clavicle.

3) A contusion 5 cm x 2 cm over the back in the centre.

4) A contusion 3 cm x 1 cm over the back on the left side."

The doctor issued Ex.P-2, wound certificate with his opinion that the injuries are simple in nature.

32. At 4.15 p.m., P.W.3 was examined by P.W.5 and on examination, he found the following injuries, which is found noted in Ex.P-3, wound certificate :-

"1) A lacerated injury 5 cms x 3 cms x 2 cms bone deep, muscles cut over the back of the left forearm.

2) A lacerated injury 3 cms x 2 cms x 1 cm over the left shoulder blade.

3) A lacerated injury 3 cm x 1 cm x muscle deep over the left middle finger and index finger tendons out at the level of proximal interphalangeal joint.

4) A lacerated injury 2 cm x 1 cm x ½ cm over the right ring finger front."

According to the doctor, injury No.3 is grievous in nature. As P.W.3 had grievous injuries, he was referred to Tanjore Medical College Hospital, where he was admitted and treated by P.W.7. Ex.P-7 is the copy of the accident register issued by P.W.7 which shows that the injured was admitted at Tanjore Medical College Hospital at 7.20 p.m.

33. P.W.19, in the meantime, continuing with his investigation, made arrangements to take photographs of the scene of occurrence and formed a special party to search for the accused and arrest them. The houses of the accused were found locked. On 11.9.94 he questioned witnesses and recorded their statements. On the same day, the clothes which were on the dead bodies of D-1 to D-3, on being produced by the respective constables, who were present at the time of autopsy, were seized

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under Exs.P-22 to P-24 (Form-95). On 12.9.94 he questioned the doctors and recorded their statements. On 18.9.94 a requisition was sent to the court to forward the material objects for analysis.

34. At 8.00 p.m. on 19.9.94 he arrested A-7, who was brought to the police station and sent to court for remand. On 21.9.94 at 9.00 a.m. he arrested A-11, A-13, A-16 to A-18 and A-20. They were brought to the police station at 11.00 a.m. and sent to court for remand on the same day. On 22.9.94 at 10.00 p.m. he arrested A-1, A-3, A-4, A-6, A-10, A-12, A-14, A-15, A-19, A-21 and A-23 at Neelakudi village and they were sent to court for remand on the same day. On 25.9.94 at about 10.00 p.m. at Sathyavadi village, A-2, A-8, A-9 and A-22 were arrested and they were brought to the police station and on the next day they were sent to court for remand. The officer came to know that the other accused have surrendered before the court. On 26.9.94 he questioned witnesses, including the police constable and recorded their statements. After the completion of investigation final report was filed against the accused on 28.8.95 under various sections including Section 302 IPC as well as under Section 25 (1-B) (b) of the Indian Arms Act, 1959.

35. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side nor filed any written statement.

36. Learned senior counsel appearing for the appellants submits that there is inordinate delay in the complaint, Ex.P-1 and the printed first information report, Ex.P-11 reaching the hands of the Magistrate and the explanation offered by the prosecution through the evidence of P.W.18 is thoroughly unsatisfactory and according to him, the said complaint, Ex.P-1 must have been prepared after much deliberation on account of the enmity, which was in existence between Dalits and caste Hindus in the village. He further submits that there are several contradictions in the evidence of the eye witnesses and these contradictions are only on account of the fact that those witnesses would not have been present to witness the incident and have been projected by the prosecution at a later point of time to buttress the prosecution case. He further submits that though P.W.s 2 and 3 were also present at the time when P.W.1 allegedly gave a complaint, the averments made in the complaint, Ex.P-1 are at variance with the present evidence given in court. He further submits that the trial Judge messed up the whole procedure of framing charges by charging certain persons for a particular offence, but convicted other accused under the charges, though no charge was framed against them under the said charge. He submits that though the trial Judge has framed a charge under Section 114 IPC, he did not even mention in the said charge as to the nature of abetment made by the accused on account of which the accused were totally prejudiced and on this ground alone the accused are entitled for an acquittal.

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37. On the above contentions we have heard the learned Public Prosecutor and perused the recorded evidence, both oral and documentary.

38. The cause of death of D-1 to D-3 stands established through the evidence of the doctors, P.W.5 and P.W.6, who conducted autopsy on D-1 to D-3 and the post-mortem certificates, Exs.P4 to P-6. The cause of death of D-1 to D-3 was not disputed by the appellants before the trial court nor it is disputed before this Court. On the medical evidence we hold that D-1 to D-3 died on account of homicidal violence.

39. The prosecution, before the trial court, examined seven witnesses as persons, who witnessed the incident. They were examined as P.W.s 1 to 3 and 8 to 11 and of them, according to the prosecution, P.W.s 2 and 3 have suffered injuries on the date when D-1 to D-3 also suffered fatal injuries.

40. We will now take up the first contention as regards the delay in the first information report reaching the court. P.W.18, the police constable, was examined to explain the delay in the complaint, Ex.P-1 and the first information report, Ex.P-11, reaching the court belatedly. P.W.18 in his evidence has stated that the complaint, Ex.P-1 and the printed first information report, Ex.P-11, were handed over to him by P.W.13 at 3.45 p.m. and that since 10.9.94 was a holiday, he went to the residence of the Magistrate at Thiruvarur, which was found locked. According to him, he enquired with the neighbours and he was asked to wait for the arrival of the Magistrate. He has stated that he waited till 9.00 p.m. at the residence of the Magistrate, but the learned Magistrate did not turn up. According to him, thereafter, he went to Thiruvarur police station, where he was informed that the Magistrate at Thiruthuraipoondi was in-charge of Thiruvarur court and, therefore, he left for Thiruthuraipoondi, which he reached at midnight. According to him, on reaching Thiruthuraipoondi at midnight, he was informed that the in-charge Magistrate is at Nagapattinam and as there were no transport facilities from Thiruthuraipoondi to Nagapattinam, he boarded a lorry and reached the place of the Judicial Magistrate-I at 3.30 a.m. on 11.9.94 and handed over the complaint, Ex.P-1 and the printed first information report, Ex.P-11 to the Judicial Magistrate-I, Nagapattinam.

41. P.W.18 was cross-examined and a suggestion was put to him that even at Thiruvarur he was informed that the in-charge Magistrate is at Nagapattinam and that he has suppressed the said fact and had come out with a false explanation for the delay. We, on going through the evidence of P.W.18, are not satisfied with the explanation given by the prosecution, through the evidence of P.W.18, for the inordinate delay in the first information report reaching the Magistrate. The prosecution did not mark the passport, which was given to him at the police station for taking the complaint and the printed first information report. If the prosecution had marked the passport given to the police constable, P.W.18, then the said passport

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would have shown whether he was directed to go to Thiruvarur or Thiruthuraipoondi or Nagapattinam. The prosecution conveniently omitted to mark the said document, which would have supported the evidence of P.W.18, if it is true. Though P.W.18 has also admitted that at Thiruvarur police station he was informed that Thiruthuraipoondi Magistrate is in-charge and he has noted that in his pocket notebook, the prosecution did not produce the pocket notebook, though according to P.W.18, it is very much available at the police station.

42. The two important documents, which were in possession of the prosecution and which would have supported the oral evidence of P.W.18 have been withheld from the court. If the important documents are not produced and marked to support the oral evidence of P.W.18, especially when there is an inordinate delay in the complaint and the printed first information report reaching the court, then the court cannot but draw an adverse inference against the prosecution that the two documents do not support the present version of P.W.18.

43. In this background when we look at the evidence of P.W.14, the court clerk attached to the Judicial Magistrate's Court, Thiruvarur, it becomes clear that on the date of incident Kudaivasal police station knew that the in-charge Magistrate is at Nagapattinam, since she has admitted that the said fact was known to the police officers of Kudaivasal police station. If that be the case, it is difficult to accept the present version given by P.W.18 that he was informed by the police officials at Thiruvarur that the in-charge Magistrate to whom the complaint and the printed first information report have to be handed over is at Thiruthuraipoondi and later at Thiruthuraipoondi he was asked to go to Nagapattinam Magistrate. It is therefore clear that the present evidence of P.W.18 was only to get over the delay in the first information report reaching the Magistrate and the said evidence is highly unsatisfactory and also not supported by any document. Hence, this Court is unable to accept the explanation offered by the prosecution through P.W.18 in view of our above discussion and finding.

44. We are fully aware that the delay in receipt of the complaint and the printed first information report by the court by itself will not affect the prosecution case and it depends on the facts of each case. The case in hand is a case where there was animosity between Dalits and caste Hindus and on an earlier occasion a person belonging to Dalit community was murdered and the present incident is only a sequel to the earlier murder. In the above background, this Court has to view the evidence of the witnesses with great care and caution, as there will always be a tendency for the witnesses to implicate as many persons as possible on account of the caste factor.

45. Keeping this in mind, for example, when we look at the evidence of P.W.s 1, 2 and 10, we find that there are contradictions as to who caused the death of D-1 and as to how P.W.2 suffered injury. According to P.W.2, when D-1 was cut, there was no one present and he alone was present to witness the

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incident, which means that P.W.s 1 and 10 could not have seen the attack on D-1. In the above background the admission of P.W.2 that he alone was present when the occurrence took place assumes importance. If P.W.2 alone was present when D-1 was cut, then P.W.s 1 and 10 could not have been present. The evidence of P.W.2 is to the effect that D-1 was cut by A-3 and thereafter A-2 to A-4 and A-14 cut D-1 and that further P.W.2 was attacked by A-1 and A-14. This evidence of P.W.2 is not supported by P.W.1, since according to him it was A-1, who cut D-1 and caused his death and that P.W.2 was cut by A-3 and not by A-1 and A-14 as claimed by P.W.2. Though P.W.1 says he was present and witnessed the above acts of the above accused, his presence at the scene of occurrence was not even spoken to by P.W.2.

46. Similarly, though P.W.2 claims that he informed P.W.1 that he saw D-2 being murdered, P.W.1 in his evidence has stated that he heard A-12 and A-24 to A-26 shouting that they have murdered D-2 and thereby meaning that the information about the murder of D-2 was given to him not by P.W.2 and that he came to know of the said murder of D-2 from the shouts of A-12 and A-24 to A-26.

47. Similarly, P.W.10 has implicated A-1 as the person, who has murdered D-1, which is totally contradictory to the evidence of P.W.2, as according to P.W.2 it was A-3 who murdered D-1. According to P.W.10, A-2 and A-3 have cut P.W.2 whereas neither P.W.1 nor P.W.2 have implicated A-2 for causing injury to P.W.2.

48. Similarly, though P.W.3 claims that he was attacked by A-13, A-17 and A-20, the evidence of P.W.11 is at variance with the evidence of P.W.3, as according to P.W.11, it was A-19 and A-20 who caused injuries to P.W.3.

49. Similarly, though P.W.3 in his evidence has stated that D-2 was cut by A-12, A-17 and A-18, P.W.11 has implicated not only A-12, A-17 and A-18, but also A-13.

50. As regards D-3, P.W.8 claims that on the instigation of A-24, A-1 to A-3, A-5, A-6, A-8, A-9, A-11, A-12, A-14, A-15, A-17 to A-19 and A-21 have attacked and caused his death; but P.W.9 did not implicate A-24. P.W.9 also had implicated A-4 and A-13, whereas A-4 and A-13, who were implicated by P.W.9 were not implicated by P.W.8.

51. The above contradictions, which are serious, have to be viewed in the backdrop of the delay in the first information report reaching the court and the animosity, which was in existence between the two rival factions in the village.

52. At this juncture, we cannot lose sight of the admission made by P.W.13, the head constable, who registered the first information report. He has admitted that in the printed first information report initially it is found written that the accused are A-1 and 20 others and later it is altered as A-1 and 25 others. The above facts create a suspicion in the mind of

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the Court that whether the occurrence could have taken place in the manner spoken to by the witnesses and it is possible that the prosecution has shaped the case at the instance of the prosecution witnesses, since three persons have died on the side of the prosecution.

53. We have to now consider the prejudice caused to the accused on account of the incorrect framing of the charges and the findings given by the learned trial Judge. Though there are number of mistakes, omissions and non-mentioning of details in several charges, we feel that it is not necessary for us to mention all the details and it is suffice to mention only a few instances.

54. Charge No.11 was framed against A-3 and A-12 under Section 302 IPC. The allegation in the said charge is that A-3 cut D-2 (Venkatachalam) and A-12 cut D-3 (Balasubramanian) and murdered them. The learned trial Judge, though specifically in the charge stated that A-3 cut D-2 and A-12 cut D-3, convicted A-3 for causing the death of D-3 and A-12 for causing the death of D-2, which is totally against the allegations made in the said charge. The learned trial Judge, not stopping with the mistake already committed by him, went on to commit another blunder by convicting A-1 under the said charge for causing the death of D-1 (Rajamanickam), though he was not even charged and no allegation was made against him under the said charge.

55. Similarly, charge No.12 was framed against A-1 to A-3, A-5, A-6, A-8 to A-13, A-21 and A-24 to A-26 under Section 302 read with 34 IPC. The allegation in the said charge is that A-1 to A-3, A-5, A-6, A-8 to A-12 and A-21 attacked D-3, A-24 attacked D-1 while A-13, A-25 and A-26 attacked D-2. The learned trial Judge, under charge No.13, framed a charge under Section 302 read with 34 IPC (2 counts) against A-4, A-14, A-17 and A-18 and the allegation in the said charge against them is that they shared the common intention of the other accused for causing the death of D-2 and D-3. Having framed two charges, one under Section 302 read with 34 IPC under charge No.12 for causing the death of three persons (D-1 to D-3), he framed another charge under two counts for causing the death of the two persons (D-2 and D-3) against different accused, but convicted A-1 to A-6, A-8 to A-11, A-13, A-14, A-17, A-18 and A-21 without giving any finding whether the said conviction is under charge No.12 or charge No.13.

56. We are at a loss to understand as to why the learned trial Judge, having framed a charge under Section 302 read with 34 IPC under charge No.12 against the accused mentioned therein, decided to frame another charge under two counts against another set of accused under charge No.13 under Section 302 read with 34 IPC and had chosen to convict some of the accused without indicating whether they are guilty under charge No.12 or charge No.13. It is to be remembered that charge No.12 is for the murder of D-1 to D-3 against the accused mentioned therein whereas charge No.13 is against the accused mentioned in the

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said charge for the murder of D-2 and D-3 alone, but not for the murder of D-1.

57. The learned trial Judge under charge No.14 has framed a charge against A-2, A-4 to A-18, A-22, A-23 and A-25 under Section 302 read with 149 IPC on the allegation that they have shared the common object of the other accused in committing the murder. But he did not mention in the said charge as to whose murder they have shared the common object of the other accused. Having framed a charge under charge No.14, he framed another charge under charge No.15 against A-21 under Section 302 read with 149 IPC (2 counts) on the allegation that he shared the common object of the other accused in murdering D-1 to D-3. Having framed two charges under Section 302 read with 149 IPC against one set of accused under charge No.14 and under Section 302 read with 149 IPC against A-21 alone (2 counts) under charge No.15, the learned trial Judge omitted to give any finding for both the charges, which means there is an implied acquittal of the accused under both the charges.

58. The learned trial Judge having framed a charge under Section 302 read with 149 IPC (2 counts) under charge No.14, strangely framed another charge under Section 302 read with 149 IPC (3 counts) under charge No.16 against A-19, A-20 and A-24 to A-26 for sharing the common object of the other accused in murdering D-1 to D-3 without specifically mentioning as to who are the other accused, who murdered D-1, D-2 and D-3 and that how they shared the common object of the other accused who murdered them. Having framed such a charge under three counts against the accused, mentioned in charge No.16 above, under Section 302 read with 149 IPC, the learned trial Judge has chosen to convict A-19 and A-20 alone under Section 302 read with 34 IPC.

59. The learned trial Judge, ultimately, did not glorify himself by framing a charge under Section 114 simplicitor against A-24 to A-26 without mentioning as to the nature of abetment made by those accused and whom they have abetted. Having framed such a charge under Section 114 simplicitor against A-24 to A-26, he found A-24 alone guilty under Section 302 read with 114 IPC, which means the trial Judge, without framing a charge alleging that A-24 has abetted the murder and was also present at the time of the commission of the offence, has chosen to convict him for the said offence.

60. Charge No.18 was framed against A-2, A-14 and A-21 under Section 25 (1-B) (b) read with Section 4 of the Arms Act on the allegation that they have used velkambu, which is prohibited by Government Order No.336 without mentioning the date of notification and the department which has issued the notification. After finding them guilty, he sentenced them to two years rigourous imprisonment, though the prosecution did not mark the said notification. The trial Judge ought to have seen that though a Government Notification is a public document falling within Section 74 of the Evidence Act, the prosecution ought to have marked it, for him to take cognisance of it though

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it is not necessary for the prosecution to examine a witness to prove its contents. The prosecution not having marked the document and the trial Judge not having mentioned in the said charge as to the nature of notification issued in Notification No.336, the accused were certainly prejudiced in their defence on account of the absence of material in the said charge, as they were prejudiced in respect of the defence as regards the other charges, which we have mentioned earlier. The failure to mark the Government Notification No.336, in our view is bad in law, and our view is also strengthened by a judgment of a Division Bench of this Court rendered in ADHIMOOLAM & OTHERS VS. STATE (1995 CRLJ 1051).

61. On the discussion made above, we are of the view that all the appellants are entitled for the benefit of doubt and the same is given to them. In the result, the appeal is allowed. The conviction and sentence passed by the trial court are set aside and the appellants are acquitted of all the charges framed against them. Fine amount, if any, paid by the appellants will be refunded to them. It is reported that the appellants are on bail. Bail bonds executed by the appellants shall stand cancelled.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Addl. Sessions Judge, Nagapattinam.
2. -Do- Thro' The Principal Sessions Judge, Nagapattinam.
3. The District Collector, Nagapattinam.
4. The Director General of Police, Chennai.
5. The Public Prosecutor, High Court, Madras.
6. The Superintendent of Central Prison, Cuddalore.

7. THE JUDICIAL MAGISTRATE
THIRUVARAM.

8. DO THRO THE CHIEF JUDL,
MAGISTRATE, NAGAPATTINAM.

9. THE JUDICIAL MAGISTRATE NO.1
TANJORE.

10. DO THRO THE CHIEF JUDL
MAGISTRATE, TANJORE AT KUMBAKONAM.

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11. THE INSEPCTOR OF POLICE
KUDAIVASAL POLICE STATION,
THIRUVARUR DISTRICT
(Crime No.462/94)

12. THE STATION HOUSE,
OFFICER, TANJORE,
WEST POLICE STATION.

+ 1 cc to Mr.D.Veerasekaran, Advocate SR No.10892

CRL. A. NO. 703 OF 1996

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